

AMENDMENT NO. ____

Calendar No. _____

Purpose: To make technical changes and corrections and to clarify the treatment of passenger and nonmail freight service.

IN THE SENATE OF THE UNITED STATES – 107th Cong., 2nd Sess.

S. 1713

Alaska Bypass Mail, Passenger and Freight Stability Act of 2001

To amend title 39, United States Code, to direct the Postal Service to adhere to an equitable tender policy in selecting air carriers of nonpriority bypass mail to certain points in the State of Alaska, and for other purposes.

Referred to the Committee on Governmental Affairs and ordered to be printed.

Amendment intended to be proposed by Mr. STEVENS.

Viz.

1 (a) On page one strike all after the enacting clause and insert in its place the
2 following:

3 **‘SECTION 1. RURAL SERVICE IMPROVEMENT.**

4 ‘(a) SHORT TITLE- This Act may be cited as the ‘Rural Service Improvement
5 Act of 2002’.

6 ‘(b) FINDINGS- Congress makes the following findings:

7 ‘(1) The State of Alaska is the largest State in the Union and has a very
8 limited system of roads connecting communities.

9 ‘(2) Alaska has more pilots per capita than any other State in the Union.

10 ‘(3) Pilots flying in Alaska are often the most skilled and best-prepared
11 pilots in the world.

12 ‘(4) Air travel within the State of Alaska is often hampered by severe
13 weather conditions and treacherous terrain.

14 ‘(5) The United States Government owns nearly 2/3 of Alaska's landmass,
15 including large tracts of land separating isolated communities within the
16 State.

17 ‘(6) Such Federal ownership has inhibited the ability of Alaskans to build
18 roads connecting isolated communities.

19 ‘(7) Most communities and a large portion of the population within the
20 State can only be reached by air.

21 ‘(8) The vast majority of food items and everyday necessities destined for
22 these isolated communities and populations can only be transported
23 through the air.

1 ‘(9) The Intra-Alaska Bypass Mail system, created by Congress and
2 operated by the United States Postal Service under section 5402 of title 39,
3 U.S.C., with input from the Department of Transportation, connecting
4 hundreds of rural and isolated communities within the State, is a critical
5 piece of the Alaska and the national transportation system. The system is
6 like a 4-legged stool, designed to--

7 ‘(A) provide the most affordable means of delivering food and
8 everyday necessities to these rural and isolated communities;

9 ‘(B) establish a system whereby the Postal Service can meet its
10 obligations to deliver mail to every house and business in America;

11 ‘(C) support affordable and reliable passenger service; and

12 ‘(D) support affordable and reliable nonmail freight service.

13 ‘(10) Without the Intra-Alaska Bypass Mail system--

14 ‘(A) it would be difficult and more expensive for the Postal
15 Service to meet its obligation of delivering mail to every house and
16 business in America; and

17 ‘(B) food, medicine, freight, and everyday necessities and
18 passenger service for these rural and isolated communities would
19 cost several times the current level.

20 ‘(11) Attempts by Congress to support passenger and nonmail freight
21 service in Alaska using the Intra-Alaska Bypass Mail system have yielded
22 some positive results, but some carriers have been manipulating the
23 system by carrying few, if any, passengers and little nonmail freight while

1 earning most of their revenues from the carriage of nonpriority bypass
2 mail.

3 ‘(12) As long as the Federal Government continues to own large tracts of
4 land within the State of Alaska which impedes access across these lands to
5 connect isolated communities, it is in the best interest of the Postal
6 Service, the residents of Alaska and the United States--

7 ‘(A) to ensure that the Intra-Alaska Bypass Mail system remains
8 strong, viable, and affordable for the Postal Service;

9 ‘(B) to ensure that residents of rural and isolated communities in
10 Alaska continue to have affordable, reliable, and safe passenger
11 service;

12 ‘(C) to ensure that residents of rural and isolated communities in
13 Alaska continue to have affordable, reliable, and safe nonmail
14 freight service;

15 ‘(D) to encourage that intra-Alaska air carriers move toward safer,
16 more secure, and more reliable air transportation under the Federal
17 Aviation Administration's guidelines and in accordance with part
18 121 of title 14, Code of Federal Regulations, where such
19 operations are supported by the needs of the community; and

20 ‘(E) that Congress, pursuant to the authority granted under Article
21 I, Section 8 of the United States Constitution to establish Post
22 Offices and post roads, make changes to ensure that the Intra-
23 Alaska Bypass Mail system continues to be used to support

1 substantial passenger and nonmail freight service and to reduce
2 costs for the Postal Service.

3 '(c) SELECTION OF CARRIERS OF NONPRIORITY BYPASS MAIL TO
4 CERTAIN POINTS IN ALASKA-

5 '(1) DEFINITIONS- Section 5402 of title 39, United States Code, is
6 amended--

7 '(A) by striking subsection (e);

8 '(B) by redesignating subsections (a) through (d) as subsections (b)
9 through (e), respectively; and

10 '(C) by inserting before subsection (b), as redesignated, the
11 following:

12 '(a) In this section--

13 '(1) the term 'acceptance point' means the point at which nonpriority
14 bypass mail originates;

15 '(2) the terms 'air carrier', 'interstate air transportation', and 'foreign air
16 transportation' have the meanings given such terms in section 40102(a) of
17 title 49, U.S.C.;

18 '(3) the term 'base fare' is the fare paid to the carrier issuing the passenger
19 ticket or carrying nonmail freight which may entail service being provided
20 by more than 1 carrier;

21 '(4) the term 'bush carrier' means a carrier operating aircraft certificated
22 within the payload capacity requirements of subsection (g)(1)(D)(i) on a
23 city pair route;

1 ` (5) the term `bush passenger carrier' means a passenger carrier that meets
2 the requirements of subsection (g)(1)(D)(i) and provides passenger service
3 on a city pair route;

4 ` (6) the term `bush route' means an air route in which only a bush carrier is
5 tendered nonpriority bypass mail between the origination point, being
6 either an acceptance point or a hub, as determined by the Postal Service,
7 and the destination city;

8 ` (7) the term `city pair' means service between an origin and destination
9 city pair;

10 ` (8) the term `composite rate'--

11 ` (A) means a combination of mainline and bush rates paid to a
12 bush carrier for a direct flight from an acceptance point to a bush
13 destination beyond a hub point; and

14 ` (B) shall be based on the mainline rate paid to the hub, plus the
15 lowest bush rate paid to bush carriers in the State of Alaska;

16 ` (9) the term `equitable tender' means the practice of the Postal Service of
17 equitably distributing mail on a fair and reasonable basis between those air
18 carriers that offer equivalent services and costs between 2 communities in
19 accordance with the regulations of the Postal Service;

20 ` (10) the term `existing mainline carrier' means a mainline carrier (as
21 defined in this section) that on January 1, 2001, was--

22 ` (A) certified under part 121;

1 '(B) qualified to provide mainline nonpriority bypass mail service;
2 and
3 '(C) actually engaged in the carriage of mainline nonpriority
4 bypass mail through scheduled service within the State of Alaska;
5 '(11) the term 'freight service' means the transport of cargo that otherwise
6 cannot be carried on a qualified passenger aircraft because of:
7 '(A) size or weight restrictions imposed on the aircraft or carrier
8 providing the service; or
9 '(B) prohibitions on the carriage of passengers and hazardous
10 materials on the same flight.
11 '(12) the term 'mainline carrier' means a carrier operating aircraft under
12 part 121 and certificated within the payload capacity requirements of
13 subsection (g)(1)(D)(ii) on a given city pair route;
14 '(13) the term 'mainline route' means a city pair in which a mainline
15 carrier is tendered nonpriority bypass mail;
16 '(14) the term 'new', when referencing a carrier, means a carrier that--
17 '(A) meets the respective requirements of subsection (g)(1)(D)(i)
18 or (ii), depending on the type of route being served and the size of
19 aircraft being used to provide service; and
20 '(B) began providing nonpriority bypass mail service on a city pair
21 route within the State of Alaska after January 1, 2001;
22 '(15) the term 'part 121' means part 121 of title 14, Code of Federal
23 Regulations;

1 ` (16) the term `part 135' means part 135 of title 14, Code of Federal
2 Regulations;

3 ` (17) the term `scheduled service' means--

4 ` (A) flights are operated in common carriage available to the
5 general public under a published schedule;

6 ` (B) flight schedules are announced in advance to the general
7 public in systems specified by the Postal Service, in addition to the
8 Official Airline Guide or the air cargo equivalent of that Guide;

9 ` (C) flights depart whether full or not; and

10 ` (D) customers contract for carriage separately on a regular basis;

11 ` (18) the term `Secretary' means the Secretary of Transportation;

12 ` (19) the term `121 bush passenger carrier' means a bush passenger carrier
13 providing passenger service on bush routes under part 121;

14 ` (20) the term `121 mainline passenger carrier' means a mainline carrier
15 providing passenger service through scheduled service on routes under
16 part 121;

17 ` (21) the term `121 passenger aircraft' means an aircraft flying passengers
18 on a city pair route that is operated under part 121;

19 ` (22) the term `121 passenger carrier' means a passenger carrier that
20 provides scheduled service under part 121;

21 ` (23) the term `135 bush passenger carrier' means a bush passenger carrier
22 providing passenger service through scheduled service on bush routes
23 under part 135; and

1 ` (24) the term `135 passenger carrier' means a passenger carrier that
2 provides scheduled service under part 135.'.

3 ‘(2) REQUIREMENTS FOR SELECTION- Section 5402(g)(1) of title 39,
4 United States Code, is amended--

5 ‘(A) in the matter preceding subparagraph (A), by inserting after
6 `in the State of Alaska,' the following: `shall adhere to an equitable
7 tender policy within a qualified group of carriers, in accordance
8 with the regulations of the Postal Service, and';

9 ‘(B) in subparagraph (C) by striking `to the best' and all that
10 follows and inserting a semicolon; and

11 ‘(C) in subparagraph (D) by inserting `with at least 3 scheduled
12 (non-contract) flights per week between two points' after
13 `scheduled service’.

14 ‘(3) APPLICATION OF RATES- Section 5402(g)(2) of title 39, United
15 States Code, is amended--

16 ‘(A) by striking `and' at the end of subparagraph (A);

17 ‘(B) by striking the period at the end of subparagraph (B) and
18 inserting a semicolon; and

19 ‘(C) by adding at the end the following:

20 ‘(C) shall offer a bush passenger carrier providing service on a route
21 between an acceptance point and a hub not served by a mainline carrier
22 the opportunity to receive equitable tender of nonpriority bypass mail at

1 mainline service rates when a mainline carrier begins serving that route if
2 the bush passenger carrier--

3 (i) meets the requirements of paragraph (1);

4 (ii) provided at least 20 percent of the passenger service (as
5 calculated in subsection (h)(5)) between such city pair for the 6
6 months immediately preceding the date on which the bush carrier
7 seeks such tender; and

8 (iii) continues to provide not less than 20 percent of the passenger
9 service on the city pair while seeking such tender;

10 (D) shall offer bush passenger carriers and nonmail freight carriers the
11 opportunity to receive equitable tender of nonpriority bypass mail at
12 mainline service rates from a hub point to a destination city if the city pair
13 is also being served by a mainline carrier and--

14 (i) for a passenger carrier--

15 (I) the carrier meets the requirements of paragraph (1);

16 (II) the carrier provided at least 20 percent of the
17 passenger service (as calculated in subsection (h)(5)) on the
18 city pair route for the 6 months immediately preceding the
19 date on which the carrier seeks such tender; and

20 (III) the carrier continues to provide not less than 20
21 percent of the passenger service on the route; or

22 (ii) for a nonmail freight carrier--

23 (I) the carrier meets the requirements of paragraph (1); and

1 ` (II) the carrier provided at least 25 percent of the nonmail
2 freight service (as calculated in subsection (i)(6)) on the
3 city pair route for the 6 months immediately preceding the
4 date on which the carrier seeks such tender;

5 ` (E)(i) shall not offer equitable tender of nonpriority mainline bypass mail
6 at mainline rates to a bush carrier operating from an acceptance point to a
7 hub point, except as described in subparagraph (C); and

8 ` (ii) may tender nonpriority bypass mail at bush rates to a bush carrier if
9 the Postal Service determines that--

10 ` (I) the bush carrier meets the requirements of paragraph (1);

11 ` (II) the service to be provided on such route by the bush carrier is
12 not otherwise available through direct mainline service; and

13 ` (III) tender of mail to such bush carrier will not decrease the
14 efficiency of nonpriority bypass mail service (in terms of payments
15 to all carriers providing service on the city pair route and timely
16 delivery) for the route;

17 ` (F) may offer tender of nonpriority bypass mail to a passenger carrier
18 from an acceptance point to a destination city beyond a hub point at a
19 composite rate if the Postal Service determines that--

20 ` (i) the carrier provides passenger service in accordance with the
21 requirements of subsection (h)(2);

22 ` (ii) the carrier qualifies under subsection (h) to be tendered
23 nonpriority bypass mail out of the hub point being bypassed;

1 ` (iii) the tender of such mail will not decrease efficiency of
2 delivery of nonpriority bypass mail service into or out of the hub
3 point being bypassed; and

4 ` (iv) such tender will result in reduced payments to the carrier by
5 the Postal Service over flying the entire route; and

6 ` (G) notwithstanding subparagraph (F), shall offer equitable tender of
7 nonpriority mail in proportion to passenger and non-mail freight mail
8 pools described in this section between qualified passenger and non-mail
9 freight carriers on a route from an acceptance point to a bush destination at
10 a composite rate if--

11 ` (i)(I) for a passenger carrier, the carrier receiving the composite
12 rate provided 20 percent of the passenger service on the city pair
13 route for the 12 months immediately preceding the date on which
14 the carrier seeks tender of such mail; or

15 ` (II) for a nonmail freight carrier, the carrier receiving the
16 composite rate provided at least 25 percent of the nonmail freight
17 service for the 12 months immediately preceding the date on which
18 the carrier seeks tender of such mail; and

19 ` (ii)(I) nonpriority mail was being tendered to a passenger carrier
20 or a nonmail freight carrier at a composite rate on such city pair
21 route on January 1, 2000; or

22 ` (II) the hub being bypassed was not served by a mainline carrier
23 on January 1, 2000.

1 The tender of nonpriority bypass mail under subparagraph (G) shall be on an
2 equitable basis between the qualified carriers that provide the direct service on the
3 city pair route and the qualified carriers that provide service between the hub
4 point being bypassed and the destination point, based on the volume of
5 nonpriority bypass mail on both routes.'.

6 '(4) SELECTION OF CARRIERS TO HUB POINTS- Section 5402(g) of
7 title 39, United States Code, is amended by adding at the end the
8 following:

9 '(4)(A) Except as provided under subparagraph (B) and paragraph (5), the Postal
10 Service shall select only existing mainline carriers to provide nonpriority bypass
11 mail service between an acceptance point and a hub point in the State of Alaska.

12 '(B) The Postal Service may select a carrier other than an existing mainline carrier
13 to provide nonpriority bypass mail service on a mainline route in the State of
14 Alaska if--

15 '(i) the Postal Service determines (in accordance with criteria established
16 in advance by the Postal Service) that the mail service between the
17 acceptance point and the hub point is deficient and provides written notice
18 of the determination to existing mainline carriers to the hub point; and

19 '(ii) after the 30-day period following issuance of notice under clause (i),
20 including notice of inadequate capacity, the Postal Service determines that
21 deficiencies in service to the hub point have not been eliminated.

1 ` (5)(A) The Postal Service shall offer equitable tender of nonpriority bypass mail
2 to a new 121 mainline passenger carrier entering a mainline route in the State of
3 Alaska, if that carrier--

4 ` (i) meets the requirements of subsection (g)(1)(D)(ii); and

5 ` (ii) has provided at least 50 percent of the number of insured passenger
6 seats as the number of available passenger seats being provided by the
7 mainline passenger carrier providing the greatest number of available
8 passenger seats on that route for the 6 months immediately preceding the
9 date on which such carrier seeks tender.

10 ` (B) A new 121 mainline passenger carrier that is tendered nonpriority mainline
11 bypass mail under subparagraph (A)--

12 ` (i) shall be eligible for equitable tender of such mail only on city pair
13 routes where the carrier meets the conditions of subparagraph (A);

14 ` (ii) may not count the passenger service provided under subparagraph (A)
15 toward the carrier meeting the minimum requirements of this section; and

16 ` (iii) shall provide at least 20 percent of the passenger service (as
17 determined for bush passenger carriers in subsection (h)(5)) on such route
18 to remain eligible to be tendered nonpriority mainline bypass mail.

19 ` (C) Notwithstanding paragraphs (1)(B) and (5)(A), a new 121 mainline
20 passenger carrier, otherwise qualified under this subsection, may immediately
21 receive equitable tender of nonpriority mainline bypass mail to a hub point if it
22 meets the requirements of subsections (g)(1)(A), (C), and (D) and (h)(2)(B) and--

1 ` (i) all qualified 121 mainline passenger carriers discontinue service on
2 that city pair route; or

3 ` (ii) no 121 mainline passenger carrier serves that city pair route.

4 ` (D) A carrier operating under a code share agreement on the date of enactment of
5 the Rural Service Improvement Act of 2002 that received tender of nonpriority
6 mainline bypass mail on a city pair route may count the passenger service
7 provided under the entire code share arrangement on such route if the code share
8 agreement terminates. That carrier shall continue to provide at least 20 percent of
9 the passenger service (as determined for bush passenger carriers in subsection
10 (h)(5)) between the city pair as a 121 mainline passenger carrier while seeking
11 such tender.

12 ` (6)(A) Notwithstanding subsection (g)(1)(B), passenger carriers providing
13 Essential Air Service under a Department of Transportation order issued under
14 subchapter II of chapter 417 of title 49, U.S.C., shall be tendered all nonpriority
15 mail, in addition to all nonpriority bypass mail, by the Postal Service to
16 destination cities served by the Essential Air Service flights consistent with that
17 order unless the Postal Service finds that the Essential Air Service carrier's service
18 does not meet the needs of the Postal Service.

19 ` (B) Service provided under this paragraph, including service provided to points
20 served in conjunction with service being subsidized under the Essential Air
21 Service contract, may not be applied toward any of the minimum eligibility
22 requirements of this section.'.

1 “(5) SELECTION OF CARRIERS TO BUSH POINTS- Section 5402 of
2 title 39, United States Code, is amended by adding at the end the
3 following:

4 “(h)(1) Except as provided under paragraph (7), on a given city pair route, the
5 Postal Service shall offer equitable tender of 70 percent of the nonpriority bypass
6 mail on that route to all carriers providing scheduled passenger service in
7 accordance with part 121 or part 135 that--

8 “(A) meet the requirements of subsection (g)(1);

9 “(B) provided 20 percent or more of the passenger service (as calculated in
10 paragraph (5)) between the city pair for the 12 months preceding the date
11 on which the 121 passenger aircraft or the 135 passenger carrier seek
12 tender of nonpriority bypass mail; and

13 “(C) meet the requirements of paragraph (2).

14 “(2) To remain eligible for equitable tender under this subsection, the carrier or
15 aircraft shall--

16 “(A) continue to provide not less than 20 percent of the passenger service
17 on the city pair route for which the carrier is seeking the tender of such
18 nonpriority bypass mail;

19 “(B)(i) for operations under part 121, operate aircraft type certificated to
20 carry at least 19 passengers;

21 “(ii) for operations under part 135, operate aircraft type certificated to
22 carry at least 5 passengers; or

1 ` (iii) for operations under part 135 where only a water landing is available,
2 operate aircraft type certificated to carry at least 3 passengers;

3 ` (C) insure all available passenger seats on the city pair route on which the
4 carrier seeks tender of such mail; and

5 ` (D) operate flights under its published schedule.

6 ` (3)(A) Except as provided under subparagraph (E), if a 135 passenger carrier
7 serves a city pair route and meets the requirements of paragraph (1) or (2) when a
8 121 passenger carrier becomes qualified to be tendered nonpriority bypass mail
9 on such route with a 121 passenger aircraft in accordance with paragraphs (1) and
10 (2), the qualifying 135 passenger carriers on that route shall convert to operations
11 with a 121 passenger aircraft within 5 years after the 121 passenger aircraft begins
12 receiving tender on that route in order to remain eligible for equitable tender
13 under paragraph (1). The 135 carrier shall--

14 ` (i) begin the process of conversion not later than 2 years after the 121
15 passenger aircraft begins carrying nonpriority bypass mail on that route;
16 and

17 ` (ii) submit a part 121 compliance statement not later than 4 years after the
18 121 passenger aircraft begins carrying nonpriority bypass mail on that
19 route.

20 ` (B) Completion of conversion under subparagraph (A) shall not be required if all
21 121 passenger carriers discontinue the carriage of nonpriority bypass mail with
22 121 passenger aircraft on the city pair route.

1 “(C) Any qualified carrier operating in the State of Alaska under this section may
2 request a waiver from subparagraph (A). Such a request, at the discretion of the
3 Secretary, may be granted for good cause shown. The requesting party shall state
4 the basis for such a waiver.

5 “(D) If 6 years and 3 months after the date of enactment of the Rural Service
6 Improvement Act of 2002, a 135 passenger carrier is providing service on a city
7 pair route and a 121 passenger aircraft becomes eligible to receive tender of
8 nonpriority bypass mail on that route, that 135 passenger carrier shall convert to
9 operations under part 121 within 12 months of the 121 passenger carrier being
10 tendered nonpriority bypass mail. The Postal Service shall not continue the tender
11 of nonpriority bypass mail to a 135 passenger carrier that fails to convert to part
12 121 operations within 12 months after the 121 passenger carrier being tendered
13 such mail under this paragraph.

14 “(E) Notwithstanding the requirements of this subsection, if only 1 passenger
15 carrier or aircraft is qualified to be tendered nonpriority bypass mail as a
16 passenger carrier or aircraft on a city pair route, the Postal Service shall tender 20
17 percent of the nonpriority bypass mail described under paragraph (1) to the
18 passenger carrier or aircraft providing the next highest level of passenger service
19 on such route.

20 “(4) Qualification for the tender of mail under this subsection shall not be counted
21 toward the minimum qualifications necessary to be tendered nonpriority bypass
22 mail on any other route.

1 ` (5)(A)(i) In this section, the percent of the passenger service shall be calculated
2 using the data described under subparagraph (ii) of this paragraph. To ensure
3 accurate reporting of market share the Postal Service shall compare the resulting
4 percentage to the data collected under subsection (k). Any carrier purposefully
5 falsifying data or significantly misstating market share in an attempt to qualify for
6 tender of nonpriority bypass mail may be subject to penalties described in
7 subsection (o).

8 ` (ii) The Postal Service shall calculate the percent of passenger service provided
9 by a carrier on a city pair route by calculating the lesser of--

10 ` (I) the amount of the passenger excise tax paid by or on behalf of a
11 carrier, as determined by reviewing the collected amount of base fares for
12 passengers actually flown by a carrier from the origination point to the
13 destination point, divided by the value of the total passenger excise taxes,
14 as determined by reviewing the collected amount of base fares paid by or
15 on behalf of all passenger carriers providing service from the hub point to
16 the bush destination point; or

17 ` (II) the amount of half of the passenger excise tax paid by or on behalf of
18 a carrier, as determined by reviewing the collected amount of base fares
19 for passengers actually flown by a carrier on the city pair route, divided by
20 the value of the total passenger excise taxes, as determined by reviewing
21 the collected amount of base fares paid by or on behalf of all passenger
22 carriers providing service between the origination point and the
23 destination point.

1 “(B) For the purposes of calculating passenger service as described under
2 subparagraph (A), a bush passenger carrier providing intervillage bush passenger
3 service may include the carriage of passengers carried along any point of the route
4 between the route's origination point and the final destination point. Such
5 calculation shall be based only on the carriage of passengers on regularly
6 scheduled flights and only on flights being flown in a direction away from the hub
7 point. Passenger service provided on chartered flights shall not be included in the
8 carrier's calculation of passenger service.

9 “(6)(A) The Secretary shall establish new bush rates for passenger carriers
10 receiving tender of nonpriority bypass mail under this subsection.

11 “(B) The Secretary shall establish a bush rate based on data collected under
12 subsection (k) from 121 bush passenger carriers. Such rates shall be paid to all
13 bush passenger carriers operating on city pair routes where a 121 bush passenger
14 carrier is tendered nonpriority bypass mail.

15 “(C) The Secretary shall establish a bush rate based on data collected under
16 subsection (k) from 135 bush passenger carriers. Such rates shall be paid to all
17 bush passenger carriers operating on city pair routes where no 121 bush passenger
18 carrier is tendered nonpriority bypass mail.

19 “(D) The Secretary shall establish a bush rate based on data collected under
20 subsection (k) from bush passenger carriers operating aircraft on city pair routes
21 where only water landings are available. Such rates shall be paid to all bush
22 passenger carriers operating on the city pair routes where only water landings are
23 available.

1 ` (7) The percentage rate in paragraph (1) shall be 75 percent 3 years and 3 months
2 after the date of enactment of the Rural Service Improvement Act of 2002.

3 ` (i)(1) Except as provided under paragraph (7), on a given city pair route, the
4 Postal Service shall offer equitable tender of 20 percent of the nonpriority bypass
5 mail on such route to those carriers transporting 25 percent or more of the total
6 nonmail freight (in revenue or weight as determined by the Postal Service), for the
7 12 months immediately preceding the date on which the freight carrier seeks
8 tender of nonpriority bypass mail.

9 ` (2) To remain eligible for equitable tender under this subsection, a freight carrier
10 shall continue to provide not less than 25 percent of the nonmail freight service on
11 the city pair route for which the carrier is seeking tender of such mail.

12 ` (3) If a new freight carrier enters a market, that freight carrier shall meet the
13 minimum requirements of subsection (g)(1) and shall operate for 12 months on a
14 given city pair route before being eligible for equitable tender of nonpriority
15 bypass mail on that route.

16 ` (4) If no carrier qualifies for tender of nonpriority bypass mail under this
17 subsection, such mail to be divided under this subsection, as described in
18 paragraph (1), shall be tendered to the nonmail freight carrier providing the
19 highest percentage of nonmail freight service (in terms of revenue or weight as
20 determined by the Postal Service as calculated under paragraph (6)) on the city
21 pair route. If no nonmail freight carrier is present on a route to receive tender of
22 nonpriority bypass mail under this paragraph, the nonpriority bypass mail to be

1 divided under paragraph (1) shall be divided equitably among carriers qualified
2 under subsection (h).

3 `(5) Qualification for the tender of mail under this subsection shall not be counted
4 toward the minimum qualifications necessary to be tendered nonpriority bypass
5 mail on any other route.

6 `(6)(A) In this subsection, the percent of nonmail freight shall be determined by
7 calculating the lesser of--

8 `(i) the amount of the freight excise tax paid by or on behalf of a carrier, as
9 determined by reviewing the collected amount of base fares for nonmail
10 freight actually flown by a carrier from the origination point to the
11 destination point, divided by the value of the total nonmail freight excise
12 taxes, as determined by reviewing the collected amount of base fares paid
13 by or on behalf of all nonmail freight carriers providing service from the
14 origination point to the destination point; or

15 `(ii) the amount of half of the nonmail freight excise tax paid by or on
16 behalf of a carrier, as determined by reviewing the collected amount of
17 base fares for nonmail freight actually flown by a carrier on the city pair
18 route, divided by the value of the total nonmail freight excise taxes, as
19 determined by reviewing the collected amount of base fares paid by or on
20 behalf of all nonmail freight carriers providing service on the city pair
21 route.

22 `(B) To ensure accurate reporting of market share the Postal Service shall
23 compare the resulting percentage under subparagraph (A) to the percent of

1 nonmail freight carried on a city pair route as calculated from data provided
2 pursuant to subsection (k), by dividing the revenue of, or weight of, (as
3 determined by the Postal Service) nonmail freight earned by or carried by a
4 carrier from the transport of nonmail freight from an origination point to a
5 destination point by the total amount of revenue earned, or the weight of, nonmail
6 freight carried (as determined by the Postal Service) by all carriers from the
7 transport of nonmail freight from the origination point to the destination point.
8 Any carrier purposefully falsifying data or significantly misstating market share in
9 an attempt to qualify for tender of nonpriority bypass mail may be subject to
10 penalties described in subsection (o).

11 `(7) The percentage rate in paragraph (1) shall be 25 percent 3 years and 3 months
12 after the date of enactment of the Rural Service Improvement Act of 2002.

13 `(j)(1) Except as provided by paragraph (3), there shall be equitable tender of 10
14 percent of the nonpriority bypass mail to all carriers on each city pair route
15 meeting the requirements of subsection (g)(1) that do not otherwise qualify for
16 tender under subsection (h) or (i).

17 `(2) If no carrier qualifies under this subsection with respect to a city pair route,
18 the 10 percent of nonpriority bypass mail allocated under paragraph (1) shall be
19 divided evenly between the pools described under subsections (h) and (i) to be
20 equitably tendered among qualified carriers under such subsections, such that--

21 `(A) the amount of nonpriority bypass mail available for tender among
22 qualified carries under subsection (h) shall be 75 percent; and

1 ` (B) the amount of nonpriority bypass mail available for tender among
2 qualified carries under subsection (i) shall be 25 percent.

3 ` (3)(A) Except as provided by subparagraph (B), the percentage rate under
4 paragraph (1) shall be 0 percent 3 years and 3 months after the date of enactment
5 of the Rural Service Improvement Act of 2002.

6 ` (B) The percentage rate under paragraph (1) shall remain 10 percent for equitable
7 tender for 6 years and 3 months after the date of enactment of the Rural Service
8 Improvement Act of 2002 for a nonpriority bypass mail carrier on bush routes
9 originating from the main hub of the carrier designated under subparagraph (C), if
10 the carrier seeking the tender of such mail--

11 ` (i) meets the requirements of subsection (g)(1);

12 ` (ii) is not qualified under subsection (h) or (i);

13 ` (iii) operates routes originating from the main hub of the carrier
14 designated under subparagraph (C); and

15 ` (iv) has invested at least \$500,000 in a physical hanger facility prior to
16 January 1, 2002 in such a hub city.

17 ` (C) For purposes of subparagraph (B), a carrier may designate only one hub city
18 as its main hub and once such designation is transmitted to the Postal Service it
19 may not be changed. Such selection and transmission must be transmitted to the
20 Postal Service within 6 months of the date of enactment of the Rural Service
21 Improvement Act of 2002. A carrier attempting to receive tender of nonpriority
22 bypass mail under this subsection shall not be eligible for such tender after the
23 carrier becomes qualified for tender of nonpriority bypass mail under subsection

1 (h) or (i) on any route. The purchase of another carrier's hanger facility after such
2 date of enactment shall not be considered sufficient to meet the requirement of
3 subparagraph (B)(iv).

4 `(k)(1) Not less than every 2 years, in conjunction with annual updates, the
5 Secretary shall review the need for a bush mail rate investigation. The Secretary
6 shall use show cause procedures to speedily and more accurately determine the
7 cost of providing bush mail service. In determining such rates, the Secretary shall
8 not take into account the cost of passenger insurance rates or premiums paid by
9 the passenger carriers or other costs associated with passenger service.

10 `(2) In order to assure sufficient, reliable, and timely traffic data to meet the
11 requirements of this subsection, the Secretary shall require--

12 `(A) the monthly submission of the bush carrier's data on T-100 diskettes,
13 or any other suitable form of data collection, as determined by the
14 Secretary; and

15 `(B) the carriers to retain all books, records, and other source and
16 summary documentation to support their reports and to preserve and
17 maintain such documentation in a manner that readily permits the audit
18 and examination by representatives of the Postal Service or the Secretary.

19 `(3) Documentation under paragraph (2) shall be retained for 7 years or until the
20 Secretary indicates that the records may be destroyed. Copies of flight logs for
21 aircraft sold or disposed of shall be retained.

22 `(4) Carriers qualified to be tendered nonpriority bypass mail shall submit to the
23 Secretary the number and type of aircraft in the carrier's fleet, the level of

1 passenger insurance covering its fleet, and the name of the insurance company
2 providing such coverage.

3 `(5) Not later than 30 days after the last day of each calendar month, carriers shall
4 report to the Secretary the excise taxes paid by city pair to the Department of the
5 Treasury and the weight of and revenue earned by the carriage of nonmail freight.
6 Final compiled data shall be made available to carriers providing service in the
7 hub.

8 `(l) No qualified carrier may be tendered nonpriority bypass mail under
9 subsections (h) and (i) simultaneously on a route unless no other carrier is
10 tendered mail under either subsection.

11 `(m)(1) Carriers qualifying for tender under subsections (h) and (i) simultaneously
12 shall be tendered nonpriority bypass mail under subsection (h).

13 `(2) A carrier shall be tendered nonpriority bypass mail under subsection (i) if that
14 carrier--

15 `(A) was qualified under both subsections (h) and (i) simultaneously; and

16 `(B) becomes unqualified under subsection (h) but remains qualified under
17 subsection (i).

18 `(n)(1) A carrier operation resulting from a merger or acquisition between any 2
19 carriers operating between points in Alaska shall have the passenger and nonmail
20 freight of all such merged or acquired carriers on the applicable route counted
21 toward meeting the resulting carrier's minimum requirements to receive equitable
22 tender of nonpriority bypass mail on such route for the 12-month period following
23 the merger or acquisition.

1 “(2) After the 12-month period described under paragraph (1), the carrier resulting
2 from the merger or acquisition shall demonstrate that the carrier meets the
3 minimum passenger or nonmail freight carriage requirements of this section to
4 continue receiving tender of such mail.

5 “(o) In addition to any penalties applied to a carrier by the Federal Aviation
6 Administration or the Secretary, any carrier that significantly misstates passenger
7 or nonmail freight data required to be reported under this section on any route, in
8 an attempt to qualify for tender of nonpriority bypass mail, shall receive--

9 “(1) a 1-month suspension of tender of nonpriority bypass mail on the
10 route where the data was misstated for the first offense;

11 “(2) a 6-month suspension of tender of nonpriority bypass mail on the
12 route where the data was misstated for the second offense;

13 “(3) a 1-year suspension of tender of all nonpriority bypass mail in the
14 entire State of Alaska for the third offense in the State; and

15 “(4) a permanent suspension of tender of all nonpriority bypass mail in the
16 entire State of Alaska for the fourth offense in the State.

17 “(p)(1) The Postal Service or the Secretary, in carrying out subsection (g)(2), (h),
18 or (i), may deny equitable tender to an otherwise qualified carrier who does not
19 operate under this section in good faith or under the intent of the “Rural Service
20 Improvement Act of 2002”.

21 “(2) The Postal Service or the Secretary may waive any provision of subsection
22 (h) or (i), if the carrier provides substantial passenger or nonmail freight service

1 on the route where the carrier seeks tender of nonpriority mail and nonpriority
2 bypass mail.

3 ‘(3) To ensure adequate competition among passenger and non-mail freight
4 carriers on a mainline route the Postal Service or the Secretary may waive the
5 requirements of (g)(1)(D), (g)(2)(E), (g)(4), or (g)(5), or any provision of
6 subsection (h), if:

7 ‘(A) a 121 bush passenger carrier seeks tender of nonpriority mail or
8 nonpriority bypass mail on a mainline route not served by a 121 mainline
9 passenger carrier and the 121 bush passenger carrier provides substantial
10 passenger or nonmail freight service on the route, or

11 ‘(B) a carrier meeting the requirements of (g)(1)(D)(ii) seeks tender of
12 nonpriority bypass mail and provides substantial nonmail freight service
13 on the city pair route.

14 Waivers granted under this paragraph shall cease to be valid once a qualified
15 mainline carrier begins providing service and seeks tender of nonpriority bypass
16 mail in accordance with this section on the city pair route. The receipt of waivers
17 and subsequent operation of service on a city pair route under this subsection shall
18 not be counted towards meeting the requirements of any part of this section for
19 any other city pair route. In granting waivers under this paragraph and offering
20 equitable tender of nonpriority bypass mail the Postal Service or the Secretary
21 shall give preference to passenger service needs over nonmail freight needs on a
22 city pair route.

1 “(4) In granting waivers for or denying tender to carriers under this subsection, the
2 Postal Service or the Secretary shall consider in the following order of
3 importance--

4 “(A) the passenger needs of the destination to be served (including amount
5 and level);

6 “(B) the nonmail freight needs of the destination to be served;

7 “(C) the amount of nonpriority bypass mail service already available to the
8 destination;

9 “(D) the mail needs of the destination to be served;

10 “(E) the savings to the Postal Service in terms of payments made to
11 carriers;

12 “(F) the amount or level of passenger service already available to the
13 destination; and

14 “(G) the amount of nonmail freight service already available to the
15 destination.

16 “(q) The Secretary shall make a regular review of carriers receiving, or attempting
17 to qualify to receive, equitable tender of nonpriority bypass mail. If the Secretary
18 suspends or revokes an operating certificate, the Secretary shall notify the Postal
19 Service. Upon such notification, the Postal Service shall cease tender of mail to
20 such carrier until the Secretary certifies the carrier is operating in a safe manner.
21 Upon such receipt, the carrier shall demonstrate that it otherwise meets the
22 minimum carriage requirements of this section before being tendered mail under
23 this section.

1 ` (r) The Postal Service shall have the authority to tender nonpriority bypass mail
2 to any carrier that meets the requirements of subsection (g)(1) on any route on an
3 emergency basis. Such emergency tender shall cease when a carrier qualifies for
4 tender on such route under the terms of this section.

5 ` (s) Notwithstanding any other provision of law, and except for written contracts
6 authorized under subsections (b), (c) and (d) of this section, tender by the Postal
7 Service of any category of mail to a carrier for transportation between any two
8 points within the State of Alaska shall not give rise to any contract between the
9 Postal Service and a carrier, nor shall any such carrier acquire any right in
10 continued or future tender of such mail by virtue of past or present receipt of such
11 mail. This subsection shall apply to any case commenced before, on, or after the
12 date of enactment of this subsection.'.

13 ` (d) ACTIONS OF AIR CARRIERS TO QUALIFY- Beginning 6 months after
14 the date of enactment of this Act, if the Secretary determines, based on the
15 Secretary's findings and recommendations of the Postal Service, that an air carrier
16 being tendered nonpriority bush bypass mail is not taking actions to attempt to
17 qualify as a bush passenger or nonmail freight carrier under section 5402 of title
18 39, United States Code, (as amended by this Act) the Postal Service shall
19 immediately cease tender of all nonpriority bypass mail to such carrier.

20 ` (e) TECHNICAL AND CONFORMING AMENDMENTS-

21 ` (1) TITLE 39- Section 5402 of title 39, United States Code, is amended--

‘(A) in subsections (b) through (e) (as redesignated by this Act) and subsection (f) by striking ‘Secretary of Transportation’ each place it appears and inserting ‘Secretary’; and

‘(B) in subsection (f)--

‘(i) by striking ‘subsections (a), (b), and (c)’ and inserting ‘subsections (b), (c), and (d)’; and

'(ii) by striking `subsection (d)' and inserting `subsection (e)'.

“(2) TITLE 49- Section 41901 of title 49, United States Code, is amended in subsection (a), by striking ‘5402(d)’ and inserting ‘5402(e)’.

‘(f) REPORTS TO CONGRESS- Not later than 12 months after the date of enactment of this Act, the Postal Service and the Secretary of Transportation shall submit a report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on the progress of implementing this Act.

‘(g) EFFECTIVE DATES-

“(1) IN GENERAL- Except as provided under paragraph (2), this Act (including the amendments made by this Act) shall take effect on the date of enactment of this Act.

‘(2) SELECTION OF CARRIERS- Subsection (c)(5) shall take effect 15 months after the date of enactment of this Act.’

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